

William M. McSwain (collectively, “the United States”), hereby appeal to the United States Court of Appeals for the Third Circuit from the Court’s Memorandum and Order entered on February 25, 2020 (ECF Nos. 141 and 142, which incorporates by reference the district court’s previous Memorandum at ECF No. 133), granting Safehouse and Jose Benitez’s Motion for Final Declaratory Judgment (ECF No. 137) and denying the United States’ Motion for Summary Judgment (ECF No. 139).¹

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¹ As the United States previously communicated to the Chambers of the Hon. Gerald McHugh, it will move in district court to stay the Declaratory Judgment by no later than this Friday, February 28, 2020. Although the United States’ Notice of Appeal divests this Court of jurisdiction over those aspects of the case involved in the appeal, the Court retains the ability to rule on a motion for a stay. *See Venen v. Sweet*, 758 F.2d 117, 120-121 & n.2 (3d Cir. 1985); *Rakovich v. Wade*, 834 F.2d 673, 674 (7th Cir. 1987) (“[A] notice of appeal does not deprive the district court of jurisdiction over a motion for stay of its judgment.”). This is consistent with the rule requiring that the United States first move in the district court for a stay before seeking identical relief from the Court of Appeals. Fed. R. App. P. 8(a)(1). *See In re Miranne*, 852 F.2d 805, 806 (5th Cir. 1988).

CERTIFICATE OF SERVICE

I hereby certify that, on this date, I caused a true and correct copy of The United States' Notice of Appeal, which was filed electronically and is available for viewing and download from the court's CM/ECF system, to be served upon all counsel of record.

/s/Gregory B. David

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Dated: February 26, 2020